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SUBJECT: ELECTION CAMPAIGN FINANCE REGULATIONS

11. (U) SUMMARY: The Independent Election Commission (IEC) on March 25, released the regulation on campaign financing for the August 2009 presidential and provincial council elections. The regulation limits who can contribute, and lays out clear guidelines on how candidates must track incoming and outgoing cash flows. The regulations also promote transparency by requiring use of the formal banking sector and require a level playing field for GIROA resources. This new regulation is a substantial improvement over its counterparts for the 2004 and 2005 elections. The as-yet missing element in the 2009 regulation is an enforcement mechanism, now under discussion with the newly-formed Electoral Complaints Commission (ECC). END SUMMARY.

THE ELECTORAL LAW: NOT ENOUGH ON ITS OWN

12. (U) The current regulation expands on Article 53 of the Electoral Law, which details electoral offenses. Article 53 details finance-related electoral offenses as: offering or receiving payment or other benefit for the purpose of influencing the electoral process; making use of funds originating from illegal activities; and making use of foreign funds for the purpose of influencing the electoral process. Article 53 does not address mechanisms to create a system for tracking contributions or articulate enforcement mechanisms.

SPELLING OUT WHO CAN CONTRIBUTE

13. (U) Under the 2009 regulation, only individual Afghan citizens and political parties registered with the Ministry of Justice and endorsing at least one candidate are eligible to contribute to campaigns. At this time around 100 political parties are registered and more may register before the election. The regulation treats loans for use in a campaign as contributions and values donations of goods or services at the market worth of the gift. The regulation highlights that any government support or provided public resources must be equally available to all candidates. It defines public resources as "funds, materials, equipment, services, facilities, and property, including paid time and services provided by public employees or by the people employed by the government." Candidate security is specifically not considered a campaign contribution.

REQUIRING CLEAR RECORD KEEPING

14. (U) The new regulations place significant emphasis on pushing campaign finance into public view and the formal banking sector. The IEC will publish the names of individuals who donate over 50,000 Afs (USD 1057) on the IEC website to ensure visibility on the source of funding. Before the campaign period opens on June 16, each candidate must designate a financial agent to the IEC and open a bank account specifically for campaign funds. Details of the account, which cannot overlap with others the candidate may hold, must be provided to the IEC. Candidates must deposit

monetary contributions exceeding 5000 Afs (USD 105) and pay expenses over that amount from the account.

¶5. (U) After voting day, candidates will have up to 30 days to submit a report tracking all incoming and outgoing funds used by their campaign. Failure to submit a complete report is an electoral offense subject to the ECC which may prevent standing in future elections, but does not specify whether failure to report will disqualify a victor from taking office. For contributions over 5000 Afs, reports must note: 1) the actual amount, or for goods and services, market value; 2) the date of receipt; 3) the name and contact information of the contributor; 4) the nature of the contribution. Every expense of more than 5000 Afs must show: 1) the expense amount; 2) the date of payment; 3) an explanation of the cost; 4) the name and contact information of the recipient. Information about contributions and expenses valued at less than 5000 Afs should be provided in a consolidated report of all such contributions and should be accompanied by an original logbook. All reports must be accompanied by receipts.

PROGRESS SINCE 2004, 2005

¶6. (U) In 2004, the campaign finance regulation was introduced late, just prior to the campaign period. For the 2005 elections, the Joint Electoral Management Body (JEMB) issued guidelines limiting the amount candidates could spend during electoral campaigns and requiring candidates to document and keep a record of all campaign incomes and expenditures. With some 6000 legislative candidates, the

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JEMB never conducted a systematic review to determine compliance with the regulation. The JEMB final report on the 2005 elections recommended for greater monitoring, including random checks, of campaign financing.

STILL MORE WORK TO DO

¶7. (SBU) We will continue to work with the IEC and the ECC on articulating the investigation and enforcement mechanisms and planning for a transparent assessment process. In any case, government oversight and regulation of the formal banking sector requires strengthening in order to ensure a sound and transparent financial system. Ultimately, the success of the regulations will lay with how well the ECC implements a careful review of campaign interactions and how well the courts enforce the electoral law.
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